IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.441 OF 2007
IN
SUMMARY SUIT NO.1110 OF 2006

Bharat Jyoti ...Plaintiff

V/s.

M/s.Nitya Laboratories Limited & Anr. ..Defendants

Shri.Krishna Mohan Nair for plaintiff to show cause.
Shri.Jaideep Mitra i/b. S.R.Legal for Defendants in support.

CORAM : S.A.BOBDE, J.
DATED : 13/02/2007

P.C.:-

1. This notice of motion is taken out by defendants for setting aside ex-parte decree dated 17th July, 2006. Decree is for sum of Rs.3,13,917.81 (Rupees Three Lacs Thirteen Thousand Nine Hundred Seventeen and paise Eighty-one only). Special circumstance is set out in the original affidavit in support and affidavit in support dated 12th February, 2007.

2. By the last affidavit, Shri.Rama Rao, the partner of S.R. Legal, Advocates for the defendants

has stated that his wife has been undergoing treatment for serious disease which was diagnosed in the month of May, 2004. Special circumstance states in para seven of affidavit that he was preoccupied with continuing his wife's post operative treatment which is continuing even today. Apparently, condition of his wife is at terminal stage.

3. Having regard to the above, I consider it appropriate in the interest of justice to set aside ex-parte decree dated 17th July, 2006 subject to the condition that defendants deposit in this court an amount of Rs.3,13,917.81(Rupees Three Lacs Thirteen Thousand Nine Hundred Seventeen and paise Eighty-one only) within four weeks from today and shall abide by the order of this court that may be passed while considering summons for judgment.

4. Notice of motion is allowed in terms of prayer clause(a),(b),(c) and (d) subject to condition above.

(S.A.BOBDE, J.)